

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

No. 6:20-cv-00192

Cathy Haynes,
Plaintiff,

v.

Turner Bass & Associates et al.,
Defendants.

ORDER

This case is referred to United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636(b). Doc. 10. Defendants City of Tyler, Smith County and State of Texas each filed a motion to dismiss. Docs. 40, 41, and 47. The magistrate judge issued reports on December 15, 2022, recommending that the motions be granted. Docs. 50, 51.


Plaintiff filed a combined objection to both reports. Doc. 52. The court reviews objected-to portions of a magistrate judge's report and recommendation de novo. *See* Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1).

The objections reassert plaintiff's claim that the city and county have a general duty to enforce state and local property laws. The complaint arises out of a rental dispute between plaintiff and a storage facility. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 but does not identify any action by a state actor or official municipal policy depriving her of a constitutional right. Plaintiff has not stated a viable claim against the city or the county.

The objections also assert a conclusory allegation that the state waived its Eleventh Amendment immunity. Plaintiff does not identify an express waiver. She seeks relief pursuant to § 1983, which does not abrogate Eleventh Amendment immunity. *Quern v. Jordan*, 440 U.S. 332 (1979). Without a waiver of immunity, the court lacks jurisdiction over the claims against the state.

Having reviewed the magistrate judge's reports de novo, and being satisfied that they contain no error, the court overrules plaintiff's objections and accepts their findings and recommendations. The court grants the motions to dismiss. The court dismisses the claims against State of Texas without prejudice for lack of subject-matter jurisdiction and dismisses the claims against City of Tyler and Smith County with prejudice for failure to state a claim.

So ordered by the court on January 10, 2023.



J. CAMPBELL BARKER
United States District Judge